

**Testimony of Emery Simon  
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**“H.R. 3632, ‘The Anticounterfeiting Amendments of 2003’”**

**Before the  
Subcommittee on Courts, the Internet, and Intellectual Property  
U.S. House of Representatives  
2141 Rayburn House Office Building**

**February 12, 2004**

Good morning. Chairman Smith and Members of the Subcommittee, thank you for the opportunity to appear before you today to testify on a matter of great concern to the software industry -- the widespread distribution and sale of counterfeit software to American consumers. My name is Emery Simon and I appear before you today on behalf of the Business Software Alliance.

BSA represents the world’s leading developers of software, hardware, and Internet technologies. For more than fifteen years, BSA member companies have worked to reduce crippling piracy rates through a combination of education, enforcement and law reform. Today, BSA’s enforcement program extends to more than 65 countries around the world, including the United States. Because computer software is a high-value good, it represents the greatest share of pirated American intellectual property on a dollar basis.

Congressional attention to the piracy problem has been invaluable in meeting the serious challenges faced by copyright owners in the past. Enactment of the

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<sup>1</sup> BSA members include Adobe, Apple, Autodesk, Avid, Bentley Systems, Borland, Cisco Systems, CNC Software/Mastercam, HP, IBM, Intel, Intuit, Internet Security Systems, Macromedia, Microsoft, Network Associates, PeopleSoft, RSA Security, SolidWorks, Sybase, Symantec and VERITAS Software.

Chairman's bill, the "Anti-counterfeiting Amendments of 2003," will help ensure that publishers of software and other copyrighted works can continue to make important contributions to the U.S. economy.

Today I would like to give the Subcommittee some statistics that provide a sense of the scope and severity of the software piracy and counterfeiting problem.

Software industry growth, fueled by the ever-increasing demand for software, has become a powerful economic force in the United States, contributing each year hundreds of thousands of skilled, highly paid jobs and tens of billions of dollars in tax revenues. Globally, 4 out of 10 software programs -- 40% -- are pirated.

According to an economic impact study by IDC commissioned by BSA in 2003, reducing the 40% worldwide piracy rate by 10 percentage points to 30%, will result in the creation of an additional 1.5 million jobs, increased economic growth of \$400 billion and an additional \$64 billion in new taxes to help governments fund public programs like education, health care and law enforcement.

Software theft, including counterfeiting, causes severe economic harm, threatening creative industries while inhibiting the development of e-commerce. Losses due to software piracy and counterfeiting are on the rise, estimated at nearly \$11 billion in 2001, and rising to \$13 billion in 2002. The economic impact of software piracy extends far beyond the confines of the software industry, harming economies worldwide in the form of greatly diminished tax revenues, a substantial number of lost jobs, and losses in education, infrastructure, and research and development.

In 1998 alone, software piracy cost the U.S. economy 109,000 jobs, \$4.5 billion in wages and nearly \$991 million in tax revenues. By 2008, those numbers will rise to 175,000 lost jobs, over \$7 billion in lost wages and more than \$1 billion in lost

tax revenues. Better management of this problem could produce 1 million additional jobs and nearly \$25 billion in additional government revenues worldwide by next year.

In recent years, we have seen a dramatic increase in the amount of counterfeit software imported into the U.S. from overseas, especially from Asia. Moreover, international counterfeiting rings, many of which have ties to organized crime groups, are significantly more sophisticated in their methods of producing “look alike” software and components. Unlike the obvious fakes sold on street corners, counterfeit software is marketed as genuine product to unsuspecting consumers. To create the look of genuine packaged software, counterfeiters attach the industry’s state-of-the art physical security features to counterfeit software and packaging to create near-perfect copies capable of deceiving even the most sophisticated American consumer. These genuine physical security features -- for example, certificates of authenticity -- enter the marketplace through theft or fraud and are sold to counterfeiters through a variety of middlemen.

Software counterfeiting is a most profitable crime. And yet the sale of physical security features to facilitate widespread counterfeiting is not a criminal offense.

BSA applauds the recent efforts by federal law enforcement agencies to devote more resources to fighting counterfeiting. The aggressive pursuit of international, organized criminal counterfeiting rings is extremely important to our members.

At the same time, U.S. anti-counterfeiting laws need to keep pace with the evolving nature of the software counterfeiting problem, so that our law enforcement agencies have the tools necessary to investigate and prosecute

important links in the counterfeit supply chain. The Chairman's bill, the Anti-counterfeiting Amendments of 2003" would provide law enforcement with an important weapon in the battle against counterfeiting in this country.